



Access to Governmental Records

Town of Salem New Hampshire Policies and Procedures

Office of the Town Manager
Contact – Right-To-Know Specialist & Assistant Town Manager

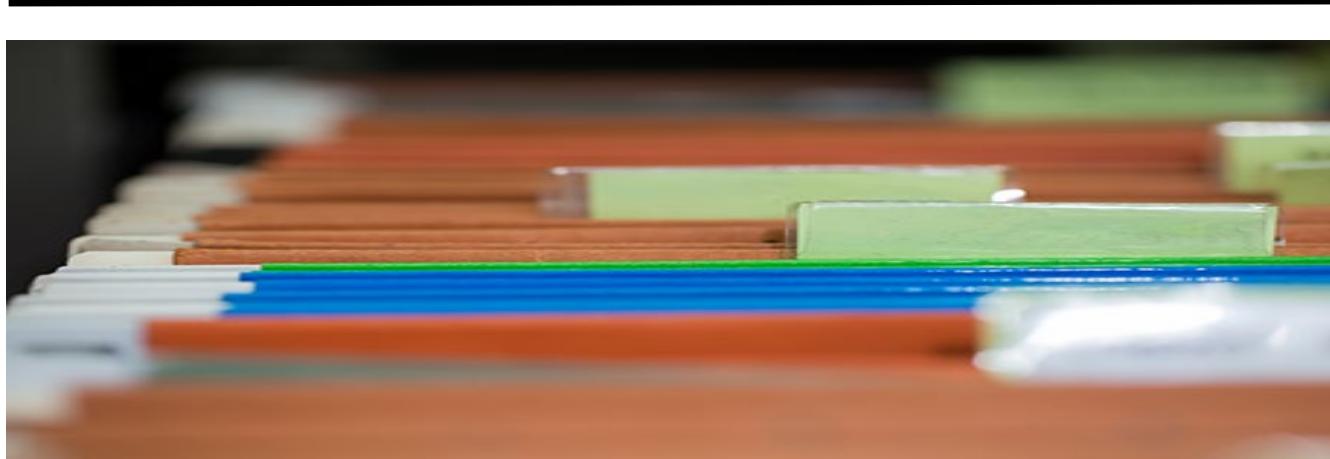


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Access to Governmental Records

Town of Salem New Hampshire - Policies and Procedures

I. SUBJECT

Right-to-Know Requests for Access to Governmental Records and General Requests for Information.

II. AUTHORITY

NH RSA 91-A

III. PURPOSE

- A. To provide elected and appointed municipal officials and municipal staff with guidance through defined procedures to ensure that requests for access to governmental records are met in a timely and appropriate consistent manner.
- B. To provide the public with guidance when requesting access to a governmental record so that their right to access and inspect such records is not unintentionally or otherwise impeded.

IV. DEFINITIONS

- A. *Copy* – means any reproduction of the original governmental record, whether requested in paper or electronic form, shall constitute a copy. This includes, but is not limited to, requests for copies of email correspondence. Fees for copies are established by the Town Council and may be set periodically.
- B. *Governmental records* – means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."
- C. *Information* – means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.
- D. *Public agency* – means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

E. *Public body (Municipal)* – means any of the following:

1. Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.
2. Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

V. **GROUP RESPONSIBILITIES**

- A. *Right-to-Know Specialist and Assistant Town Manager* – The Office of the Town Manager, via the Right-To-Know Specialist with supervision of the Assistant Town Manager (ATM), may receive initial written record requests pursuant to RSA 91-A and intended for another municipal department, board or commission. The Right-To-Know Specialist in consultation with the applicable department head of which the request is made shall determine the applicable response in the form and manner as required herein and by law. The Right-To-Know Specialist and ATM will assist the municipal staff with requests as necessary.
- B. *Town Attorney* – The Town Attorney, with authorization from the Town Manager will review record requests that have not met any of the conditions outlined in (C.) of this section to assist the Right-To-Know Specialist and appropriate municipal staff to ensure timely completion of the record request.
- C. *Department Heads and staff* – Departments that receive a request for a record within its custody that is clearly open for public access and the record is immediately accessible and the staff and/or time is available to address the request, the record will be made immediately available. If it is determined that all these conditions are not met, the requestor will be asked to complete a record request form that will be immediately date stamped and forwarded to the Right-To-Know Specialist for processing. All requests, excluding requests regarding legal discovery, shall be forwarded upon completion to the Right-To-Know Specialist for retention purposes.
- D. *Public Body* – The Town Council, and Town Manager shall ensure that established principles of the Right-To-Know Request Policy are maintained. The Council will periodically approve the appropriate administrative fee for providing copies. All written requests for records directed to any other municipal board or commission are to be referred to the Right-To-Know Specialist or ATM for processing.
- E. *Record Requestor* – The public has a right to access and inspect governmental records. Requests for public records that are not immediately accessible or inaccessible due to departmental scheduling conflicts must be submitted in writing to the Right-To-Know Specialist or ATM. A “Public Records Request” form is available on the Town’s website or at the Office of the Town Manager for convenience. All applicable fees and/or charges are due at the commencement of work when copies of public records are requested.

VI. POLICY

A. *ESTABLISHED PRINCIPLES*

1. Openness in the conduct of public business is essential to a democratic society to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.
2. The public has the right to inspect, during regular business hours and at the appropriate department location, all public governmental records and request copies except those records that are temporarily unavailable or are specifically exempted by law.
3. The public does not have to offer a reason or demonstrate a need to inspect a record. If a record is public, it must be disclosed regardless of the motive for the request.
4. The public must reasonably describe the record being requested.
5. The Town is not required to create a record that does not exist, or compile data to create a record in a specific format requested, including electronic format; however, it may be easier to create an electronic summary or other report from a database than it would be to copy large volumes to satisfy specific record requests, and may also be necessary to maintain confidentiality.
6. Records that are exempt from public access are cited under various NH laws and generally include personnel records, medical, welfare, library user, vital records or any other confidential record in which disclosure would constitute an invasion of privacy or jeopardize the security or safety of any individual. Any question as to whether a record or portion of a record may be exempt from disclosure shall be addressed to the Town Attorney prior to release.
7. Written requests for governmental records, which reference Right-To-Know or RSA 91-A, received by the Town of Salem are to be administered through the Office of the Town Manager and in coordination with the Town Attorney and appropriate department.
8. Although the Town of Salem is not required to respond to requests under the Federal Freedom of Information Act (FOIA) which applies only to Federal Governmental Agencies, any requests cited under this Federal law shall be treated as a Right-To-Know request and shall be forwarded to the appropriate department or municipal agency for processing.

VII. PROCEDURES

A. *ON-SITE RECORD REQUESTS*

1. VERBAL REQUEST RECEIVED REGARDING LEGAL DISCOVERY

If a governmental record is requested on-site by an individual or an agent providing tangible

interest in a specific case or investigation from a department that routinely receives such requests (example Police, Fire, and Code Enforcement) the department shall process the request administratively and charge the appropriate fees. A tangible interest exists where the person or their agent is requesting information in which the person has a direct interest, such as a police report or a site plan.

2. **VERBAL REQUEST RECEIVED NOT CITING RSA 91-A**

A general request made verbally by an individual for access to a governmental record shall be furnished for inspection or, if requested, copied as long as the record is readily available, and the staff determines that the record is not otherwise exempt. Municipal staff may ask the citizen to make an appointment to inspect the record if the record is temporarily unavailable or the staff receiving the request is unavailable to immediately furnish the request. When a requested record is not immediately made available for inspection, the record must be made available within five (5) business days of the request, or the request may be denied with written reasons cited, or written acknowledgement of the request may be provided to the requestor stating the reasonable time necessary to determine whether the request will be granted or denied.

If the staff determines that the requested record is exempt from public inspection, or is unsure as to whether the record is exempt, or there may be associated records outside of their direct control, they shall advise the requestor to furnish a signed written request to the Office of the Town Manager, in care of the Right-To-Know Specialist or ATM for the record citing Right-To-Know under NH RSA 91-A.

3. **VERBAL REQUEST CITING RSA 91-A**

A request made verbally by an individual citing NH RSA 91-A or right-to-know for access to a governmental record shall be referred to the Office of the Town Manager, in care of the ATM. The ATM shall inform the requestor that all record requests made pursuant to NH RSA 91-A must be furnished in writing with an original signature and delivered to the Office of the Town Manager.

B. EXTERNAL RECORD REQUESTS

1. **WRITTEN REQUEST RECEIVED REGARDING LEGAL DISCOVERY**

If a governmental record is requested in writing by an individual or an agent providing tangible interest in a specific case or investigation from a department that routinely receives such requests (example Police, Fire, and Code Enforcement). The department shall process the request administratively and charge the appropriate fees established for these services.

All requests for access of governmental records through a “duces tucem” subpoena or by written Interrogatory requests shall be immediately brought to the attention of the Town Attorney.

2. **ELECTRONIC MAIL REQUEST NOT CITING RSA 91-A**

If a governmental record is requested not citing NH RSA 91-A and is received pursuant to an electronic mail message, the staff shall determine if the record is open to public access and readily available for release. If the requested record is determined to be open to public inspection and readily available for release, then the request shall be furnished using a methodology determined most appropriate.

If the staff receives a record request by electronic mail not citing NH RSA 91-A but

determines that the requested record is exempt from public inspection, or contains exemptions which shall be redacted prior to release, or if staff is unsure as to whether or not the record is exempt, or there may be associated records outside of their direct control, they shall advise the requestor to furnish a written request for the record containing an original written signature citing Right-To-Know under NH RSA 91-A and refer the requestor to deliver the written request to the Office of the Town Manager for processing.

3. ELECTRONIC MAIL REQUEST CITING RSA 91-A

If a request is received pursuant to an electronic mail message citing NH RSA 91-A, the staff shall immediately forward the request to the Office of the Town Manager for processing. The Right-To-Know Specialist shall notify the requestor that all record requests made pursuant to NH RSA 91-A must be furnished in writing from the party making the request and delivered to the Office of the Town Manager. Digital media exists over multiple staff files, in multiple locations, and over multiple time periods. The Town must provide Acknowledgment of the Request within 5 business days of receiving the request. These files require special assistance by technical consultants to query the files and separate the topics requested from all files in areas such as emails. Therefore, to facilitate a proper search, digital files such as: emails, digital documents, digital minutes, and other digital forms have typically a 30-business day turn around, from the date of the first request. If in the opinion of the Town the request is very specific, and does not involve technical expertise for a search, then the Town may provide the digital files sooner than 30 business days, as determined by the Town. Conversely, the response by the Town may take longer than 30 days, due to the extent and technical nature of the request, as determined by the Town.

4. WRITTEN REQUEST NOT CITING RSA 91-A

If a governmental record is requested pursuant to a signed written request not citing NH RSA 91-A, the staff shall determine if the record is open to public access and readily available for release. If the requested record is determined to be open to public inspection and readily available for release, then the request shall be furnished using a methodology determined most appropriate.

If the staff receives a written record request not citing NH RSA 91-A but determines that the record is exempt from public inspection, or contains exemptions which shall be redacted prior to release, or if staff is unsure as to whether or not the record is exempt, or there may be associated records outside of their direct control, they shall record the date and time of receipt and immediately forward the original to the Town Attorney for guidance.

5. WRITTEN REQUEST CITING RSA 91-A

If a governmental record is requested pursuant to a signed written request citing NH RSA 91-A, the department receiving the request shall record the date and time of receipt and immediately forward the original to the Office of the Town Manager.

The Office of the Town Manager, in care of the ATM upon receipt of a written request citing NH RSA 91-A, shall immediately date stamp the request and notify the Town Attorney and the appropriate Department Head responsible for the requested record.

If upon determination the requested record is not readily available, the Office of the Town Manager, in care of the ATM is required to, within five (5) business days either make the record available, deny the request in writing with reason, or furnish written acknowledgement to the requestor stating a reasonable time when the determination of whether the request shall be granted or denied.

If the record requested is not readily available, a meeting shall be scheduled with the Town Attorney and appropriate staff to discuss the request and determine whether the request shall be granted or denied.

Upon determination if the request is to be granted or denied, a written letter shall be sent to the requestor by the Department Head, or their designee, unless otherwise determined by the Town Attorney, informing them of the decision. If the record is subject to disclosure, the requestor shall be informed of the location where, and business hours when, the record may be inspected.

Requested records which are maintained in electronic format may be copied to electronic media, if available, using standard file formats in a manner that does not reveal confidential information or exemptions as defined under NH RSA 91-A:5. Applicable copy fees shall apply to the electronic copy of each record unless an alternative fee has been previously established by state law or municipal ordinance. This does not prevent the Town from recouping any additional costs for electronic media provided by the Town. If the person requesting access to a governmental record prefers a different method of delivery other than copied to electronic media, a printout of the requested governmental record shall be offered as an alternative.

The Town may provide the requested record to the person requesting access by postal mail if it is determined that the governmental record is not too voluminous or requires special handling. If determined that the requested record may be mailed to the requestor, the ATM shall first notify the requestor of any fees. Payment of fees must be received in a form acceptable to the ATM prior to release of requested record.

C. PROCEDURES DURING ON-SITE INSPECTION

1. If the requestor knows specifically what records they would like to review, it is recommended that the requestor be advised to schedule an appointment with the appropriate department so that those records can be assembled ahead of time in preparation for the inspection.
2. All department record holdings are housed in closed stacks which are not openly accessible to the public.
3. Supervision of the review of files will be required during records inspection. We require when original files are provided that a Town staff member monitor the person reviewing the files.
4. Inspected records must remain in their present arrangement; documents shall stay in order.
5. Only one record series shall be inspected at a time.
6. To preserve the original record for future use, no marks, erasings or other changes to the record shall be allowed when accessed for inspection.
7. Due to the risk of damage to documents, use of ink is prohibited. The requestor inspecting any governmental record shall use pencil when taking notes.
8. To preserve the original record from physical damage, handheld scanners may be limited

based on the possibility that they may damage documents. Photocopying is permitted unless the appropriate staff considers the item to be fragile, exceptionally valuable, or too large to photocopy safely. Duplication shall be performed by staff or through an approved qualified professional. Additional security and procedures as determined by the appropriate staff may be required for fragile, one-of-a-kind, or historically significant records.

D. REDACTION OF NON-PUBLIC INFORMATION

1. Although redaction of non-public information is not specifically addressed in NH RSA 91-A, there may be certain governmental records that contain some information that must be disclosed and some information that is exempt from disclosure and which the public body or agency has a duty not to disclose.
2. Under these circumstances, the governmental entity may have an obligation to produce the non-exempt portion of the requested record if the exempt portion can be reasonably redacted or separated from the requested record.
3. Respondents to a request for information shall protect the identities of constituents who contact their elected representatives through electronic mail by redacting names, home addresses, email addresses, and telephone numbers.
4. Redaction must effectively block out the exempt portion of the record so that it is unreadable.
5. A copy of both the redacted and un-redacted record should be retained along with an explanation of why certain information is redacted. Citing the application exemptions of disclosure under NH RSA 91-A is helpful for the requestor to assess the appropriateness of the redaction.
6. Respondents to a request for information that requires redacting information should consult the Town Attorney for assistance.

E. POSTING OF REQUESTS ON THE TOWN WEBSITE

1. After the fulfillment of records being released for any Right-To-Know Request, the Town of Salem will post the contents of the 91-A Request and Fulfillment Documents to the Right-To-Know Log on our website. For each request, the log will include the following information: Date of Request, Requestor Name, and PDF's of both the Initial RTK Request, as well as the Town's Response and Fulfillment Documents. This process will apply for every Right-To-Know Request made on or after January 1, 2025. This process aligns with the Town's mission to provide openness and accessibility in the conduct of public business.

VIII. FEES AND CHARGES

- A. The Town of Salem is authorized to charge the requestor for any fees otherwise established by law for providing copies of governmental records prior to the commencement of the work. The appropriate administrative fee for providing copies is set annually by the Town Council.
- B. If a computer, photocopy machine, camera, scanner or other device is to be used to copy a

requested governmental record, the person requesting the copy shall be charged the established fee prior to the receipt of the documents.

- C. The Town of Salem charges the actual cost of postage and required envelope(s) for any postal mailing associated with record requests and the actual cost of electronic media storage (i.e. DVD, CD-ROMs, thumb drives, memory sticks, etc.), if available. The person making the request shall use only Town provided digital media to avoid any issues associated with viruses. The exception to this may be the use of digital media that is on its original packaging with no possible means to add media before opening.